

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Rogelio Saldana Hernandez,)
)
)
) Civil Action No.: 5:11-641-TLW-KDW
Plaintiff,)
v.)
)
MD, ENT Williams Barfield, III, *et al.*,)
)
Defendants.)
)

ORDER

On March 17, 2011, the Plaintiff, Rogelio Saldana Hernandez (“Plaintiff”), proceeding *pro se*, filed this civil action pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). (Doc. # 1).

The matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Kaymani D. West, to whom this case had previously been assigned. In the Report, the Magistrate Judge recommends that the Motion to Dismiss, or in the alternative, for Summary Judgment filed by Defendants Blocker and Rosario, (Doc. # 56), and the Motion to Dismiss filed by Defendant Barfield, (Doc. # 59), be granted, and further, that Plaintiff’s Motions to Amend, (Docs. # 64 and # 80), and Motion to Appoint Counsel, (Doc. # 70), be denied. (Doc. # 97). Plaintiff filed an Objection, (Doc. # 99), and then moved to amend or correct that filing. (Doc. # 102). The Defendants filed replies to Plaintiff’s Objection, (Docs. # 104 and # 105), and Plaintiff filed a sur-reply. (Doc. # 110). In conducting its review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final

determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the Plaintiff's Objection and amended Objection. After careful review of the Report and objections thereto, the Court hereby **ACCEPTS** the Report. (Doc. # 97). The Motion to Dismiss, or in the alternative, for Summary Judgment filed by Defendants Blocker and Rosario, (Doc. # 56), and the Motion to Dismiss filed by Defendant Barfield, (Doc. # 59), are thereby **GRANTED**. The Plaintiff's Motions to Amend, (Docs. # 64 and # 80), and Motion to Appoint Counsel, (Doc. # 70), are thereby **DENIED**. In addition, Plaintiff's Motion to Amend or Correct his Objection to the Report, (Doc. # 102), is **GRANTED**. The Court considered that amended Objection in its analysis. However, Plaintiff's Motion for a CT Scan Examination, (Doc. # 100), is **DENIED** as **MOOT** in light of the Court's acceptance of the Report.

IT IS SO ORDERED.

September 21, 2012
Florence, South Carolina

s/Terry L. Wooten
United States District Judge